

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

ROBERT DALE GAUTHIER and  
MICHAEL RAY FITZPATRICK,

Plaintiffs,

v.

CAPE GIRARDEAU COUNTY JAIL, et al.,

Defendants.

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No. 1:13-CV-0033-LMB

**MEMORANDUM AND ORDER**

This matter is before the Court upon plaintiffs' submission of a complaint against defendants Cape Girardeau County Jail, Captain Unknown Mulcahy, Lieutenant Unknown Stevens, Sergeant Unknown Koehler and Officer Unknown Snider [Doc. #1].

Upon review of the file, the Court notes that the caption of the complaint bears the name of two plaintiffs, Robert Dale Gauthier and Michael Ray Fitzpatrick; however, neither plaintiff has signed the complaint. Rule 11(a) of the Federal Rules of Civil Procedure requires that each pleading, written motion, and other paper be signed by an attorney of record or, if the parties are not represented by an attorney, by the parties themselves. See Fed. R. Civ. P. 11 (an unsigned complaint "shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader").

Moreover, the determination, under 28 U.S.C. § 1915(a), of whether a plaintiff qualifies for in forma pauperis status must be based upon the financial status of each of the plaintiffs, independent of the other's assets. Lee v. McDonald's, 231 F.3d 456, 459 (8th Cir. 2000). Because plaintiffs have submitted a joint request for leave to proceed in forma pauperis and a joint financial affidavit, the

Court will deny their request to proceed in forma pauperis without prejudice.<sup>1</sup> Each plaintiff must submit a separate motion for leave to proceed in forma pauperis and affidavit in support. Because plaintiffs are proceeding pro se and seek to proceed in forma pauperis, the Court will give them the opportunity to submit separate motions to proceed in forma pauperis and affidavits in support. See 28 U.S.C. § 1915(a)(1) and (2), Local Rule 2.05(A). Additionally, a review of the case file indicates that only Michael Ray Fitzpatrick submitted a prisoner trust fund account statement. The Court will order Robert Dale Gauthier to submit a prisoner trust fund account statement along with his motion for leave to proceed in forma pauperis.

Therefore,

**IT IS HEREBY ORDERED** that the Clerk of Court return to plaintiffs Robert Dale Gauthier and Michael Ray Fitzpatrick their complaint for the purpose of obtaining their original signature.

**IT IS FURTHER ORDERED** that the Clerk of Court shall forward to plaintiffs Robert Dale Gauthier and Michael Ray Fitzpatrick, with a copy of this Order, the court forms entitled “Motion to Proceed In Forma Pauperis and Affidavit in Support -- Prisoner Cases.”

**IT IS FURTHER ORDERED** that, within thirty (30) days from the date of this Order, plaintiffs Robert Dale Gauthier and Michael Ray Fitzpatrick shall submit to the Court a properly signed complaint. Their failure to do so shall result in dismissal of this action, without prejudice.

**IT IS FURTHER ORDERED** that, within thirty (30) days from the date of this order, plaintiffs Robert Dale Gauthier and Michael Ray Fitzpatrick shall each complete and submit a motion to proceed in forma pauperis and affidavit in support. Additionally, plaintiff Robert Dale Gauthier

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<sup>1</sup>The Court notes that neither Robert Dale Gauthier nor Michael Ray Fitzpatrick signed the joint motion for leave to proceed in forma pauperis [Doc. #2].


shall submit a prisoner trust fund account statement along with his motion for leave to proceed in forma pauperis.

**IT IS FURTHER ORDERED** that, if either plaintiff Robert Dale Gauthier or Michael Ray Fitzpatrick fails to return a completed form “Motion to Proceed In Forma Pauperis and Affidavit in Support -- Prisoner Cases” within thirty (30) days, the Court will dismiss the complaint as to the plaintiff who fails to comply. If none of the plaintiffs comply with this Order, the Court will dismiss this action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that, upon plaintiffs filing the requisite signed complaint and separate motions to proceed in forma pauperis, affidavits in support and prisoner account statements, the Clerk shall resubmit this matter to the Court for review pursuant to 28 U.S.C. § 1915.

**IT IS FURTHER ORDERED** that plaintiffs’ joint motion to proceed in forma pauperis [Doc. # 2] is **DENIED WITHOUT PREJUDICE**.

Dated this 28th day of February, 2013.

A handwritten signature in black ink, reading "Lewis M. Blanton". The signature is written in a cursive, flowing style.

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LEWIS M. BLANTON  
UNITED STATES MAGISTRATE JUDGE